Magistrate acquitted the accused without calling upon him for his defence and he now gives as his reason for so doing that the prosecution failed to prove that the accused was in actual possession of the rubber. In so deciding he was no doubt influenced by the decision in the case of *Chong Kon Lip v. Public Prosecutor*[1], which was quoted to him by Counsel then appearing for the accused. That was a case in which it was held that before a person can be called upon to account for how he came into possession of something reasonably suspected of being stolen, that person must be actually found in possession or found actually conveying the property suspected of being stolen. The section, however, being discussed in that case was section 35(i) of the Minor Offences Enactment. The wording of that section is different from the wording of Regulation 5(2) of the Emergency (Rubber Control) Regulations, 1949 which provides simply that a person who is unlawfully in possession of rubber shall be guilty of an offence. In *Tan Shu En & Anor. v. Public Prosecutor*[2], it was held by a Court of three Judges that to prove possession under sections 3 and 18 of the Opium and Chandu Proclamation it is necessary to prove that the accused had actual or potential physical control of the opium or chandu. Section 3(1) of the Proclamation is as follows:—

"Subject to the provisions of section 20 of this Proclamation, any person who has in his possession any opium or chandu shall be liable to imprisonment for a term not exceeding five years."

In my opinion, in a prosecution for an offence under the Rubber Control Regulations it is not necessary to prove that the accused person had actual possession of the rubber. I think it is sufficient to prove that he had potential physical control of the rubber.

So far as the sheets of rubber marked "24" are concerned, there was no evidence to show that their possession by the accused was unlawful. So far as the 125 sheets marked "Chermang" were concerned, I think there was evidence which would have justified the conviction of the accused in the absence of any explanation by him as to how these sheets came into his possession. There was evidence that the sheets were taken by Mohamed bin Haji Abdullah to Boustead's godown at Klang on the instructions of the accused. The accused did not go to the godown in the same car as the rubber but there was evidence that the accused went to Boustead's godown and was there when the rubber was being taken out of the car and that he asked Tan Leong Eng to weigh the rubber. In these circumstances the accused should have been called upon for his defence. The appeal of the Public Prosecutor is allowed and the case remitted to the Magistrates' Court at Klang to be tried *de novo* by another Magistrate. I think that a new charge should be framed relating only to the 125 sheets marked "Chermang."

Order accordingly.

TAN SIONG KOK v. REX.

[App. Crim. Juris. (Sir Charles Murray-Aynsley, C.J.) May 21, 1952]

[Singapore — Magistrate's Appeal No. 17 of 1952]

Penal Code, s. 338 — Negligence — Degree of negligence — Whether the conviction be under the Penal Code or Road Traffic Ordinance.

The appellant was charged that he on or about the 25th day of September 1951 at 12.05 a.m. at East Coast Road, Singapore, did cause grievous hurt to one Tay Heah Heang by doing a negligent act, so negligently as to endanger human life or the personal safety of others etc., and thereby committed an offence under section 338 of the Penal Code.

The appellant was tried, convicted and sentenced to six months rigorous imprisonment.

There was no dispute that the appellant was driving one of the Vehicles and that as a result of the collision the driver of the jeep station wagon lost his arm. The question at issue in this case was of what degree of negligence, if any, the appellant was guilty and whether the appellant should have been convicted under the Penal Code or under the Road Traffic Ordinance.

Held, that it has been laid down that the relevant sections of the Penal Code are only applicable where a high degree of negligence has been proved, similar to that which would justify a verdict of manslaughter under English Law. Having regard to all the circumstances in this case the appellant should have been convicted of dangerous driving and proper penalty would have been a fine of $200/- or one month rigorous imprisonment together with disqualification for a period of three years.

MAGISTRATE'S APPEAL.

N. L. Macassey for the appellant.

E. P. Shanks (Crown Counsel) for the respondent.

Cur. Adv. Vult.

Sir Charles Murray-Aynsley, C.J. : —The appellant was convicted under section 338 of the Penal Code. The matter arose out of a motor accident in which the appellant whilst overtaking another car collided with an oncoming car. Unfortunately the driver of this car had his hand outside his car, with the result that the arm got torn off.

The appeal is really concerned with whether the appellant should have been convicted under the Penal Code or under the Road Traffic Ordinance and with the question of penalty. It has been laid down that

the relevant sections of the Penal Code are only applicable where a high degree of negligence has been proved, similar to that which would justify a verdict of manslaughter under English law. In the present case the appellant was driving on a fairly wide road, 23 ft. 7 in. wide. It would appear that it was possible to overtake whilst passing an oncoming car. The manoeuvre attempted was possible but it was unskilfully executed. The injury caused was very serious but somewhat fortuitous. The speed seems to have been considerable but with a good driver it would not have been dangerous. The appellant went too wide but the impact between the two vehicles was more or less a graze. After the first impact the appellant seems to have lost control.

Having regard to all the circumstances of the case I consider that the appellant should have been convicted of dangerous driving and the proper penalty would have been a fine of $200 or 1 month rigorous imprisonment together with disqualification for a period of three years.

The question was raised at the hearing as to the propriety of introducing evidence in these cases, showing that the person charged has consumed alcohol at some time before the accident. In view of the prejudice that can be caused by this kind of evidence I think that this should not be done unless there is serious ground for supposing that the conduct of the person accused has been substantially affected thereby.

Conviction and sentence varied.

Conviction and sentence varied.

CHOO SIEW KOON & ANOR. v. REGINA.

[App. Crim. Juris. (Sir Charles Murray-Aynsley, C.J.) May 21, 1952]

[Singapore — Magistrate's Appeal No. 47 of 1952]

Gaming — Betting by way of wagering or gaming — "Public place" — Meaning of.

The appellants were charged that they, on or about the 15th day of December, 1951, at about 7.45 p.m. at the New World Park, Singapore did gamble in public at a game of chance to wit throwing ring on a numbered board and thereby committed an offence punishable under section 4(8) of the Vagrancy Ordinance, 1939. The appellants were convicted and fined $25 each. Section 4(8) reads as follows:—

> "Every person playing or betting by way of wagering or gaming in any street, road, highway, or other open and public place to which the public have or are permitted to have access, at or with any table or instrument of gaming, or any coin, card, token or other article used as an instrument or means of such wagering or gaming at any game or pretended game of chance."

The game at which the parties are alleged to have gambled is played by throwing small brass rings on to a board enclosed by glass walls about 6 inches high on all sides. The board has 14 rows of numbers running from 0 to 9. Each number is on a raised hemisphere about the size of half a golf ball. The ring fits exactly on to a number, and the construction of the board is such that if a ring is thrown on to it, it is almost bound to come to rest on one number or another. In the rare event of a ring falling between two numbers, it is admitted that a fresh throw is allowed free of charge. According to the Police, members of the public purchase chips at 10 for a dollar and stake them on different numbers according to their choice and then make a throw. If a person succeeds in throwing the ring onto a number on which he has placed a stake, he is given back 8 chips for every one chip staked.

Counsel for the defence contended that the charge cannot stand in law, on the ground that neither the New World Amusement Park nor the stall run by the appellants is a "public place" within the meaning of the section.

Held, that (1) an amusement park is within the definition of "an open and public place to which the public have or are permitted to have access" in the section; (2) the game in question was a game of chance; and (3) a game played even for cigarettes as prizes came within the mischief of the Ordinance.

Case referred to:—

(1) *Langrish v. Archer* (1882), 10 Q.B.D. 44.

MAGISTRATE'S APPEAL.

A. J. Braga for the appellants.

E. P. Shanks (Crown Counsel) for the respondent.

Cur. Adv. Vult.

Sir Charles Murray-Aynsley, C.J. : —It appears that the authorities were minded to rest the legality of a pastime indulged in at a very large number of stalls in the "New World" and other places in this city. For this purpose a party of police visited one of about a hundred stalls in the "New World", produced revolvers and proceeded to handcuff the proprietor and several patrons. This seems excessive. The appellants were charged under section 4(8) of the Vagrancy Ordinance (No. 37 of 1939) and convicted. It appears that the devotees of this form of sport paid a sum of money to the proprietor; in exchange they received metal rings which they threw at a board, the object being to make the ring land on the number which they had previously chosen. If successful they were given cigarettes.

To bring the matter within the section there must be "playing or betting by way or wagering or gaming in any.....open and public place to which the public have or are permitted to have access, at or with any table or instrument of gaming.....at any game or pretended game of chance."

There are three things to be considered: the place whether there was playing or betting by way of wagering